

RECEIVED

DOCKET FILE COPY ORIGINAL

APR 19 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of
of the Commission's Rules
to Permit Private
Carrier Paging Licensees to
Provide Service to Individuals

)
)
)
)
)
)
)

PR Docket No. 93-38

RM-8017

To: The Commission

COMMENTS
OF THE
ASSOCIATION FOR PRIVATE CARRIER PAGING SECTION
OF THE
NATIONAL ASSOCIATION OF BUSINESS
AND EDUCATIONAL RADIO, INC.

The Association for Private Carrier Paging Section of the National Association of Business and Educational Radio, Inc. ("APCP"), pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. §1.415, respectfully submits its Comments in response to the Notice of Proposed Rule Making ("Notice") adopted by the Commission in the above-styled proceeding.¹

I. BACKGROUND

the auspice of NABER. Currently, the Association has a membership of over 120 separate private paging companies. This group has been actively involved in a variety of Commission proceedings, including filing Comments in PR Docket No. 88-548 (Frequency Coordination) and PR Docket No. 89-552 (Allocation of 220 MHz). APCP also filed a Petition for Rule Making requesting amendment to the Commission's rules to provide a means by which paging systems can more efficiently share the scarce spectrum made available for private carrier paging. As a result, the Commission initiated a rule

channels at 900 MHz to serve individuals and the Federal Government.

After review of over 500 Comments and Reply Comments submitted in the proceeding, the Commission declined to expand eligibility for private carrier operations on two-way channels below 800 MHz. The channels used for two-way operations below 800 MHz are generally shared. Due to the existing congestion of these channels below 800 MHz used for two-way operations and the lack of exclusivity, the Commission cited the overriding spectrum management issue for not adopting these proposals. For the same reason, the Commission declined to adopt its proposal to permit private carriers licensed in the Business Radio Service to serve all Part 90 eligibles. The Commission encouraged ineligible end users needing two-way mobile radio communications to seek other available options that employ less crowded frequencies, including SMR services.

However, the Commission found that one-way paging only channels below 800 MHz and in the 930-931 MHz band did not suffer from the same spectrum management issue because these channels have a greater capability to accommodate additional users. The Commission, therefore, adopted the proposal which permits PCP licensees to provide one-way paging communications to persons eligible for licensing under Subparts B, C, D, and E of Part 90, and not merely to Business Radio Service eligibles. Furthermore, the Commission amended its rules to permit licensees of paging-only channels in the Business Radio Service and licensees on PCP

channels in the 929-930 MHz band to provide service to representatives of Federal Government agencies. The Commission did not adopt its proposal to expand private carrier paging service to individuals because the record failed to support any demand or need by individuals for the service.

In June 1992, APCP filed a Petition for Rule Making requesting that the Commission revisit its prior decision and reconsider the benefit to users in allowing licensees of private carrier paging systems to serve individuals.³ All comments filed supported the Petition and its proposal. Accordingly, in response to this Petition, the Commission proposed to broaden the eligibility for private paging systems to permit licensees to serve individuals.

By these Comments, APCP reiterates its arguments set forth in its Petition, supports the Commission's proposal in the Notice, and urges the Commission to take expeditious action in this proceeding.

II. COMMENTS

APCP fully supports the Commission's proposal to permit private paging systems to serve individuals. Further, APCP concurs with the Commission's assessment, in the Notice, that (1) the rapid growth in demand for paging services suggests that individual users would benefit from a choice between private and common carrier paging alternatives; (2) the expansion of the eligibility would provide the PCP licensee the ability to compete in the marketplace with resulting benefits to users; and (3) the lack of benefit to the public in retaining the existing rules.

³ See Public Notice (Rep. No. 1987) dated June 23, 1992.

Today's society is extremely mobile and is demanding telecommunications that provide constant contact with office and home. The increased number of dual-income couples requires more "personal" communications during the normal business day. For example, a pager used to provide contact with the office while travelling or attending meetings outside the office, may also provide the user who is a parent a sense of security that day care providers or older "latchkey" children have ready access to the user regardless of the user's whereabouts. Pagers, cellular phones, and other forms of mobile communications are no longer considered a luxury by most consumers, but are a requisite to the conduct of day-to-day business activities.

Due to the increased demand and decreased costs of mobile communication equipment, the manner in which the equipment, including pagers, is marketed and distributed has changed. Like the common carrier paging licensee and for competitive reasons, the PCP licensee uses a reseller as an additional means to market and distribute his/her paging services. However, due to differing eligibility criteria between private and common carrier paging systems, the PCP licensee requires a greater diligence on the part of the reseller to ensure that no ineligible individual is sold service. The PCP licensee, therefore, must assume the risk of Commission sanctions should the reseller not properly perform his/her responsibilities, or refrain from utilizing this source of marketing.

Further, the restrictive eligibility rule for PCP systems has been used by RCC paging operators in an anti-competitive manner. RCC paging operators have complained to state regulatory agencies as well as to the Commission that a PCP licensee(s) is serving ineligible users (even though the users appear to fit squarely within the Commission's interpretation of its eligibility rules). The mere threat of having to defend against these actions has lead to a reluctance by PCP licensees to utilize resellers.

As a result of the regulatory burden placed on the PCP licensee, potential users are foreclosed from considering the private paging alternative. This result is contrary to the Commission's goals to promote efficient spectrum utilization and encouraging competition within the marketplace.

Finally, APCP agrees with the Commission's analysis that expansion of eligibility to individuals is consistent with the Commission's determination in PR Docket 86-404 to allow SMR systems to serve individuals. No public benefit is derived by continuing the distinction between individual and "business" use of the private paging systems. Nor does this expansion of eligibility affect the legal status of PCP systems.⁴

⁴ PCP licensees do not resell interconnected telephone service, therefore, they are not common carriers as defined by Section 331(c)(1) of the Communications Act of 1934, as amended.

III. CONCLUSION

WHEREFORE, the Association for Private Carrier Paging Section of the National Association of Business and Educational Radio, Inc. respectfully requests that the Commission expeditiously adopt the proposed rule change.

Respectfully submitted,

ASSOCIATION FOR PRIVATE
CARRIER PAGING

By: Michael Cutler
Michael Cutler, Chairman

1501 Duke Street
Suite 200
Alexandria, Virginia 22314
(703) 739-0300

Of Counsel:

David E. Weisman, Esquire
Alan S. Tilles, Esquire
Terry J. Romine, Esquire

Meyer, Faller, Weisman and
Rosenberg, P.C.
4400 Jenifer Street, N.W.
Suite 380
Washington, D.C. 20015
(202) 362-1100

Date: April 19, 1993